



DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS-R7-NWRS-2023-0072]

Notice of Intent to Prepare a Supplemental Environmental Impact Statement for a Potential Land Exchange Involving Izembek National Wildlife Refuge Lands

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent.

SUMMARY: In accordance with the National Environmental Policy Act of 1969, as amended, and the Alaska National Interest Lands Conservation Act of 1980, as amended, along with other laws as applicable, the U.S. Fish and Wildlife Service (FWS) intends to prepare a supplemental environmental impact statement (supplemental EIS) to consider the effects of a potential land exchange of certain lands owned by the King Cove Corporation and/or the State of Alaska with certain lands owned by the U.S. Government. King Cove would use the acquired land for a road corridor for noncommercial use through the Izembek National Wildlife Refuge and the Izembek Wilderness Area. We furnish this notice to advise the public and other agencies of our intentions and to seek information and suggestions on the scope of issues to be addressed in the supplemental EIS. In particular, we will update information used in the 2013 analysis on the impacts of a then-proposed exchange and road corridor and the viability of alternatives to provide safe and reliable transportation between the City of King Cove, Alaska, and the airport at Cold Bay, Alaska.

DATES: This notice initiates the public scoping process for the supplemental EIS. The FWS must receive any public comments concerning the scope of the analysis, potential alternatives, and identification of relevant information and studies no later than [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: *Obtaining documents:* To inform public comment, we are making FWS's 2013 EIS and ROD documents available for review at <https://www.regulations.gov> in Docket No. FWS-R7-NWRS-2023-0072. In addition, any comments and other materials that we receive will be available for public inspection online at that site.

Submitting public comments: You may submit comments related to the potential Izembek land exchange and other potential transportation solutions by any of the following methods:

- *Online:* <https://www.regulations.gov>. Follow the instructions for submitting comments on Docket No. FWS-R7-NWRS-2023-0072.
- *U.S. mail:* Public Comments Processing, Attn: Docket No. FWS-R7-NWRS-2023-0072; U.S. Fish and Wildlife Service, MS: PRB/3W; 5275 Leesburg Pike; Falls Church, VA 22041–3803.

We will post all comments on <https://www.regulations.gov>. This generally means that we will post any personal information you provide us (see **Public Review Process**, below, for more information).

FOR FURTHER INFORMATION CONTACT: Shane Walker, Branch Chief of Conservation Planning and Policy, by telephone at 907-226-4626; by email at shane_walker@fws.gov; or via U.S. mail at U.S. Fish & Wildlife Service, Alaska Region, National Wildlife Refuge System, 95 Sterling Highway, Suite 1, Homer, AK 99603.

Contact Shane Walker to have your name added to our mailing list. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services.

Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: The Izembek National Wildlife Refuge (417,533 acres (ac)) and the North Creek (8,452 ac) and Pavlof (1,447,264 ac) units of

the Alaska Peninsula National Wildlife Refuge are located at the westernmost tip of the Alaska Peninsula. The 1,008,697-ac Unimak Island (the easternmost Aleutian Island of the Alaska Maritime National Wildlife Refuge) lies across the Isanotski Strait. To the north of the Izembek Refuge is the Bering Sea; to the south is the Pacific Ocean. The Izembek Wilderness covers much of the Izembek National Wildlife Refuge and includes pristine streams, extensive wetlands, steep mountains, tundra, and sand dunes, and provides high scenic, wildlife, and scientific values, as well as opportunities for solitude and recreation. The Izembek National Wildlife Refuge includes the traditional homelands of the of the Unangax̂ people.

The King Cove Corporation is an Alaska Native Village Corporation established under the Alaska Native Claims Settlement Act of 1971 (ANCSA; 43 U.S.C. 1601 *et seq.*). Under the authority of ANCSA, Congress granted to King Cove Corporation land entitlements within and adjacent to Izembek Refuge. The State of Alaska also owns lands, submerged lands, shorelands, and tidelands within and adjacent to Izembek and Alaska Peninsula Refuges, including the Izembek State Game Refuge.

The Alaska Maritime National Wildlife Refuge stretches from the Arctic Ocean to the southeast panhandle of Alaska and protects breeding habitat for seabirds, marine mammals, and other wildlife on more than 2,500 islands, spires, rocks, and coastal headlands. Sitkinak Island, which lies within the boundaries of the Alaska Maritime National Wildlife Refuge, is primarily owned by the State of Alaska, with two parcels owned by the Service.

In the Omnibus Public Land Management Act of 2009 (Pub. L. 111-11, title VI, subtitle E (“the 2009 Act”), Congress directed FWS to prepare an EIS under the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), and its implementing regulations (40 CFR parts 1500–1508) to evaluate the impacts of a proposed land exchange with the State of Alaska and the King Cove Corporation for the

purpose of constructing a single-lane gravel road between the communities of King Cove and Cold Bay, Alaska. The 2009 Act required that the road “shall be used primarily for health and safety purposes (including access to and from the Cold Bay Airport) and only for noncommercial purposes,” with limited exceptions. The land exchange contemplated by the 2009 Act would have involved the removal of approximately 206 ac within the Izembek Wilderness portion of Izembek National Wildlife Refuge for the road corridor and approximately 1,600 ac of Federal land within the Alaska Maritime National Wildlife Refuge on Sitkinak Island. In exchange, the FWS would have received approximately 43,093 ac of land owned by the State of Alaska and approximately 13,300 ac of land owned by the King Cove Corporation.

These lands are located around Cold Bay and are adjacent to the North Creek Unit of the Alaska Peninsula National Wildlife Refuge.

In accordance with section 6402(b)(2)(B) of the 2009 Act, an EIS completed in 2013 (2013 EIS; February 6, 2013, 78 FR 8577) analyzed the proposed land exchange and the potential construction and operation of a road between the communities of King Cove and Cold Bay, Alaska, and, among other alternatives, evaluated a specific road corridor through the Izembek Refuge that was identified in consultation with the State of Alaska, the City of King Cove, and the Agdaagux Tribe of King Cove. In accordance with the 2009 Act, subsequent to the preparation of the EIS and in conjunction with the 2013 record of decision (2013 ROD; February 20, 2014, 79 FR 9759), Secretary of the Interior Sally Jewell decided not to enter a land exchange after determining the land exchange (including the construction of the proposed road) was not in the public interest.

On July 3, 2019, Secretary of the Interior David Bernhardt signed a memorandum titled “Findings and Conclusions Concerning a Proposed Land Exchange Between the Secretary of the Interior and King Cove Corporation for Lands Within Izembek National Wildlife Refuge, Alaska” (2019 Secretarial Memorandum). That memorandum laid the

foundation for the concurrent approval of a land exchange agreement (2019 Exchange Agreement) between the Department of the Interior and King Cove Corporation. The 2019 Secretarial Memorandum stated that the purpose of the 2019 Exchange Agreement was to allow a road across the Izembek National Wildlife Refuge to improve access by the residents of King Cove to the airport at Cold Bay. Since the authorities under the 2009 Act had expired, the 2019 Exchange Agreement relied on the general exchange authority found at in section 1302(h) of the Alaska National Interest Lands Conservation Act of 1980 (Pub. L. 96-487, sec. 1302(h), Dec. 2, 1980; 16 U.S.C. 3192(h)). However, the 2019 Exchange Agreement relied in large part on the record developed for the exchange analyzed under the 2013 EIS and rejected by Secretary Jewell in the 2013 ROD.

On June 1, 2020, the District Court for the District of Alaska vacated the 2019 Exchange Agreement. The vacatur order, which remains in effect, was based on several legal defects in the decision, including the district court's conclusion that Secretary Bernhardt failed to properly justify the change in policy and his rejection of Secretary Jewell's prior conclusions. The district court did not rule on claims that Secretary Bernhardt's 2019 decision violated the National Environmental Policy Act (NEPA) or the Endangered Species Act (ESA; 16 U.S.C. 1531 *et seq.*) Therefore, those claims are pending and have not yet been addressed. Review of the district court's judgment is pending before an *en banc* panel of the Ninth Circuit Court of Appeals.

On March 14, 2023, Secretary of the Interior Deb Haaland issued a new decision memorandum withdrawing the Department from the 2019 Exchange Agreement between the Secretary of the Interior and King Cove Corporation. That decision memorandum identified concerns with analysis of the 2019 Exchange Agreement's potential impacts on subsistence uses and needs, and highlighted shortcomings in the record regarding NEPA and ESA analyses. In addition, the Secretary expressed significant policy concerns

regarding the nonpublic manner in which the 2019 Exchange Agreement was accomplished, as well as the terms of the exchange agreement, which differed from the exchange evaluated in the 2013 EIS.

While the authorities in the 2009 Act remain expired, the FWS will prepare a supplemental EIS to address an exchange under section 1302(h) of ANILCA or under other authorities, as applicable. The FWS's supplemental EIS analysis will focus on thoroughly assessing the impacts of the potential exchange and road, allowing for public participation, and integrating the NEPA analysis with an evaluation under ANILCA section 810. The FWS will also use and coordinate the NEPA process to help inform the Department with respect to compliance with the National Historic Preservation Act section 106 (54 U.S.C. 306108), the ESA, ANILCA (including any land exchange's furtherance of the statute's conservation and subsistence purposes), ANCSA (43 U.S.C. 1601 *et seq.*), the National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd), and the Wilderness Act of 1964 (16 U.S.C. 1131 *et seq.*).

Potential action alternatives under consideration at this time include one or more of the action alternatives from the 2013 EIS addressing the proposed land exchange and road construction and operation as outlined in the 2009 Act, one or more of the action alternatives from the 2013 EIS addressing other transportation alternatives, and a new alternative for the terms of the proposed land exchange for a road corridor approved in 2019.

Public Review Process

Request for Public Comments

The FWS is seeking public comments on issues, concerns, potential impacts, alternatives, and mitigation measures that should be considered in the analysis, particularly those not already addressed in the 2013 EIS or in need of updating.

Additional opportunities for public participation, including a public comment period of at

least 45 days, will be provided upon publication of the draft supplemental EIS.

It is important that commenters provide their comments at such times and in such manner that they are useful to the agency's preparation of the supplemental EIS.

Therefore, comments should be received prior to the close of the comment period and should clearly articulate the commenters' concerns.

Public Availability of Comments

You may submit written comments and materials concerning this proposed rule by one of the methods listed in **ADDRESSES**. Comments submitted anonymously will be accepted and considered.

If you submit a comment via <https://www.regulations.gov>, your entire comment, including any personal identifying information such as your address, phone number, and email address, will be posted on the website.

If you submit a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy comments on <https://www.regulations.gov>.

Tribal Consultation and Comment

The meaningful input of Alaska Native Tribes and Alaska Native Corporations is of critical importance to this supplemental EIS. Therefore, and as expressed in Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments," the Federal officials that have been delegated authority by the Secretary are committed to honoring the unique government-to-government political relationship that exists between the Federal Government and federally recognized Tribes (Tribes). Consultation with Alaska Native Corporations is based on Pub. L. 108-199, div. H, sec. 161, January 23, 2004, 118 Stat. 452, as amended by Pub. L. 108-447, div. H, title V, sec. 518, December 8, 2004, 118 Stat. 3267, which provides that: "The Director of the Office of Management

and Budget and all Federal agencies shall hereafter consult with Alaska Native corporations on the same basis as Indian Tribes under Executive Order No. 13175.” The FWS will hold individual consultation meetings upon request. The Secretary will consider Alaska Native Tribes’ and Alaska Native Corporations’ information, input, and recommendations, and address their concerns as much as practicable.

Reasonable Accommodations

The Department is committed to providing access to this process for all participants. For more information, see **FOR FURTHER INFORMATION CONTACT.**

Signing Authority

Shannon A. Estenoz, Assistant Secretary for Fish and Wildlife and Parks, approved this action on May 15, 2023, for publication. On May 15, 2023, Shannon A. Estenoz authorized the undersigned to sign the document electronically and submit it to the Office of the Federal Register for publication as an official document of the U.S. Fish and Wildlife Service.

Maureen D. Foster,

Chief of Staff,

Office of the Assistant Secretary for Fish and Wildlife and Parks.